

TOWN OF CHEVY CHASE
COUNCIL MEETING
TOWN HALL
January 13, 2016

- I. GENERAL BUSINESS (7:00-7:30 p.m.)
 - A. Call to Order
 - B. Pledge of Allegiance
 - C. Approval of Minutes of December 9, 2015 Council Meeting
 - D. Approval of December 2015 Financial Report
 - E. [Town Manager's Report](#)
 - F. Public Comments

- II. VARIANCE HEARINGS (7:30-8:00 p.m.)
 - A. [Schick, 7207 Maple Avenue, Front Yard Porch Roof Setback](#)

- III. PUBLIC HEARINGS (8:00-9:00 p.m.)
 - A. [Public Hearing on a Proposed Ordinance Granting a Non-Exclusive Cable Franchise to Comcast of Potomac, LLC](#)
 - B. [Public Hearing on Proposed Ordinances to Amend the Town's Ethics and Election Laws](#)

- IV. COUNCIL ACTIONS (9:00-9:15 p.m.)
 - A. [Introduction of an Ordinance to Amend the Town's Urban Forest Ordinance](#)
 - B. [Introduction of an Ordinance to Amend the Town's Buildings Ordinance Related to Administrative Variances and Retaining Walls](#)

- V. COUNCIL DISCUSSIONS (9:15-9:45 p.m.)
 - A. FY16 Budget Amendments
 - B. [Purple Line Mitigation Assistance – Requests for Proposals](#)
 - C. [Bethesda Sector Plan – Position Paper & Advocacy Group](#)
 - D. Citizen Satisfaction Survey

- VI. PUBLIC COMMENTS (9:45-10:00 p.m.)

- VII. ADJOURNMENT (10:00 p.m.)

MEMORANDUM

I-E

TO: Town Council
FR: Todd Hoffman, Town Manager
RE: Town Manager's Report
DATE: January 13, 2016

This report highlights many of the initiatives undertaken by Town staff over the past month. In the interest of brevity, I have not included ongoing staff functions. Please let me know if you have any questions or need additional information.

Council/Committee/Board Assistance:

- Coordinated and attended Council work session on Bethesda Downtown Plan, and drafted Town position paper.
- Coordinated and attended Council work session on Urban Forest Ordinance and Buildings Ordinance (Administrative Variances).
- Coordinated and attended Council work session on FY16 budget.
- Continued working with the Land Use Committee on proposed revisions to Town's Stormwater Management Ordinance.
- Reviewed and commented on Climate and Environment Committee's tree ordinance proposals.
- Worked with the Community Relations Committee and Climate and Environment Committee on special events.

Special Projects:

- Organized and attended public meeting on upcoming utility work.
- Completed E-W Highway lighting project.
- Continued archiving Town records.
- Worked to dispose of Town truck.
- Processed requests for traffic signs and street lights.
- Applied for Town membership in B-CC Chamber of Commerce.
- Coordinated special event for Bill Hudnut.
- Worked with Chevy Chase @ Home on Kaminsky memorial plaques.

STAFF REPORT

II-A

TO: Town Council
FR: Todd Hoffman, Town Manager
RE: Schick, 7207 Maple Avenue, Front Yard Porch Roof Setback
DATE: January 13, 2016

Variance Requested:

David and Abby Schick, 7207 Maple Avenue, are proposing to construct a new covered front porch at that address. The porch roof is proposed to project 8.75 feet into the 42.1 foot front yard setback. Town building regulations allow a porch roof to project no more than 3 feet in to a front yard setback; therefore, a variance of 5.75 feet is required.

Background:

As of January 8, the Town has received one phone call from Richard English, 7212 Maple Avenue, supporting approval of the variance request. Any additional comments received by the Town will be provided to the Council at the public hearing.

Staff note: The following assertions summarize materials provided by the applicant in support of the variance request. Their inclusion in the Staff Report does not intend to convey staff support for the approval or denial of the variance request. The applicant should indicate to the Council if any arguments have been misrepresented. Council should consider the entire record in considering the variance request.

Applicants' Claims for the Variance Request:

1. The variance is requested because the placement of the house on the lot relative to the established building line represents an extraordinary condition. Given the setback restraints imposed by the established building line it is not possible to add a covered front porch without a variance.
2. Approval of the variance is requested because conforming to the Town's building ordinance would be impossible, cause unusual practical difficulties, and cause undue hardship. It is impossible to construct a functional and aesthetically pleasing front porch given the current site conditions. There is currently no shelter provided at the front of the house.
3. The proposed addition will not be detrimental to the use and enjoyment of neighboring properties. Front porches are a common architectural feature in the neighborhood. It will add curb appeal to the house, which will in turn increase the appeal of the neighborhood. The front porch will be open and unimposing.
4. The request is the minimum necessary to overcome the exceptional condition that is causing the hardship. The porch has been designed and detailed to fit the proportions and architectural style of the existing house so it does not stand out as an awkward addition to the existing property and the neighborhood. It has also been sized to be functional as a front porch as opposed to a purely decorative element. If required to conform to the Town regulations, the resulting porch would be a non-functional eyesore.
5. The proposed addition does not impair the general plan of the Town. The proposed porch is consistent with other front porches in the neighborhood. It fits with the architectural style of both the existing house and surrounding community. It is an open and unimposing one-story feature that would enhance the existing house both functionally and aesthetically, and also provide a degree of shelter at the front entrance to the house.

**Town of Chevy Chase
Ordinance Granting Non-Exclusive Franchise for the
Operation of a Cable Television System**

Resolution No.:
Introduced: December 9, 2015
Adopted:
Effective Date:

WHEREAS, Maryland Code, Local Government Article, Section 5-202, as amended, grants to the legislative body of every incorporated municipality in Maryland, including the Town of Chevy Chase, general power to pass such ordinances not contrary to the Constitution of Maryland, or the public general law, as deemed necessary in order to assure the good government of the municipality, to protect and preserve the municipality's rights, property, and privileges, to preserve peace and good order, to secure persons and property from danger and destruction, and to protect the health, comfort and convenience of the citizens of the municipality;

WHEREAS, Maryland Code, Local Government Article, Section 5-204(d) and Section 1-708(c), as amended, authorize the legislative body of each municipal corporation in the State of Maryland to grant a franchise for a cable television system;

WHEREAS, Section 301 of the Town of Chevy Chase Charter authorizes the Town Council to pass ordinances as it may deem necessary for the good government of the Town; for the protection and preservation of the Town's property, rights and privileges; for the preservation of peace and good order; for securing persons and property from violence, danger and destruction; and for the protection and promotion of the health, safety, comfort, convenience, welfare and happiness of the residents of the Town; and for such other police and health matters as it may deem necessary;

WHEREAS, Section 26-2 of the Town of Chevy Chase Code authorizes the Town Council to grant franchises in accordance with Chapter 26 of the Town Code;

WHEREAS, Comcast of Potomac, LLC has applied for renewal of its non-exclusive franchise for the operation of a cable television system within Montgomery County, Maryland, including within the corporate limits of the Town of Chevy Chase;

WHEREAS, on behalf of the Town and other participating municipalities, Montgomery County, Maryland negotiated a franchise agreement renewal with Comcast of Potomac, LLC, upon the terms and conditions set forth in that certain Cable Franchise Agreement by and between Montgomery County, Maryland and Comcast of Potomac, LLC, and conducted a public hearing on said Franchise Agreement on August 3, 2015 (the "Franchise Agreement");

WHEREAS, the Franchise Agreement was approved by the Montgomery County Council on _____, 2016;

WHEREAS, the Franchise Agreement is to be administered by Montgomery County, Maryland within the Town, according to Montgomery County Chapter 8A;

WHEREAS, the Town Council introduced the following Ordinance in public session assembled on the 9th day of December, 2015;

WHEREAS, the Town Council, after proper notice to the public, considered the following Ordinance at a public hearing held on the ___ day of _____, 2016; and

WHEREAS, the Town Council finds that the ordinance as hereinafter set forth is necessary for the good government of the Town; for the protection and preservation of the Town's property, rights and privileges; for the preservation of peace and good order; for securing persons and property from violence, danger and destruction; and for the protection and promotion of the health, safety, comfort, convenience, welfare and happiness of the residents of the Town.

NOW, THEREFORE, the Town Council does hereby adopt the foregoing uncodified Ordinance.

BE IT ORDAINED AND ORDERED, this ___ day of _____, 2016, by the Town Council, acting under and by virtue of the authority given it by the Maryland Code and the Town of Chevy Chase Charter, that subject to Chapter 26 of the Town Code, a non-exclusive franchise for the operation of a cable communications system be and the same is hereby granted upon the following conditions:

1. Comcast of Potomac, LLC shall enter into an agreement with the Town of Chevy Chase upon the same terms and conditions as are set forth in the Franchise Agreement; and
2. The franchise within the Town of Chevy Chase shall be effective from the effective date of the Franchise Agreement until the end of the term of the Franchise Agreement in the unincorporated areas of Montgomery County.

AND BE IT FURTHER ORDAINED AND ORDERED, by the Town Council, acting under and by virtue of the authority granted to it by the Maryland Code and the Town of Chevy Chase Charter, that:

1. The Mayor of the Town of Chevy Chase be and is hereby authorized to execute any and all documents necessary to effectuate the intent and purpose of this Ordinance;
2. If any part or provision of this Ordinance is declared by a court of competent jurisdiction to be invalid, the part or provision held to be invalid shall not affect the validity of the Ordinance as a whole or any remaining part thereof; and

3. This Ordinance shall take effect on the _____ day of _____, 2016.

ATTEST:

TOWN OF CHEVY CHASE

Vicky Taplin, Secretary

Al Lang, Mayor
Town of Chevy Chase

**Town of Chevy Chase
Ordinance to Amend the Public Ethics Law**

Resolution No.:
Introduced: October 14, 2015
Adopted:
Effective Date:

WHEREAS, the Maryland Code, Local Government Article, Section 5-202, as amended, authorizes the legislative body of each municipal corporation in the State of Maryland to pass ordinances that such legislative body deems necessary to assure the good government of the municipality, to protect and preserve the municipality's rights, property and privileges, to preserve peace and good order, to secure persons and property from danger and destruction, and to protect the health, comfort and convenience of the citizens of the municipality; and

WHEREAS, Section 301 of the Town of Chevy Chase Charter authorizes the Town Council to pass ordinances as it may deem necessary for the good government of the Town; for the protection and preservation of the Town's property, rights and privileges; for the preservation of peace and good order; for securing persons and property from violence, danger and destruction; and for the protection and promotion of the health, safety, comfort, convenience, welfare and happiness of the resident(s) of the Town; and for such other police and health matters as it may deem necessary; and

WHEREAS, the State Public Ethics Law, State Government Article, Section 15-803 of the Maryland Code, as amended, requires each municipal corporation to enact provisions, equivalent to the provisions applicable to State officials, to govern the public ethics of local officials relating to conflicts of interest, financial disclosure, and lobbying; and

WHEREAS, by letter dated January 25, 2013, the Town was granted partial exemption from the State Public Ethics Law, and need not adopt the requirements related to lobbying; and

WHEREAS, the Town of Chevy Chase adopted Ordinance No. 13-03, on November 13, 2013, to amend the Town Ethics Law to incorporate the requirements of the State Public Ethics Law, relating to conflicts of interest and financial disclosure; and

WHEREAS, The Town Council provided a copy of Ordinance No. 13-03 to the State Ethics Commission for its review and, by letter dated September 17, 2013, the State Ethics Commission approved the Ordinance; and

WHEREAS, the Town Council finds that further amendment of the Town Public Ethics Ordinance is necessary to specify when a successful write-in candidate must file a financial disclosure statement; and

WHEREAS, the Town Council finds that the ordinance as hereinafter set forth is necessary for the good government of the Town; for the protection and preservation of the

Town's property, rights and privileges; for the preservation of peace and good order; for securing persons and property from violence, danger and destruction; and for the protection and promotion of the health, safety, comfort, convenience, welfare and happiness of the resident(s) of the Town; and

WHEREAS, the Town Council introduced the following Ordinance on the 14th day of October, 2015 and after proper notice to the public, the Town Council conducted a public hearing at which it considered the following Ordinance in public session assembled on the ___ day of _____; and

NOW, THEREFORE, the Town Council of the Town of Chevy Chase does hereby adopt the following ordinance:

AN ORDINANCE TO AMEND THE PUBLIC ETHICS LAW,
CHAPTER 2, DIVISION 4 OF THE TOWN OF CHEVY CHASE
CODE TO SPECIFY WHEN A SUCCESSFUL WRITE-IN
CANDIDATE MUST FILE A FINANCIAL DISCLOSURE
STATEMENT

SECTION 1. BE IT ORDAINED AND ORDERED, this ___ day of _____, by the Town Council of Town of Chevy Chase, acting under and by virtue of the authority granted to it by the State Government Article of the Maryland Code, and Section 301 of the Town Charter, that Chapter 2, Division 4 of the Town Code is hereby revised as follows:

Chapter 2

* * *

DIVISION 4. PUBLIC ETHICS

Sec. 2-56. Financial disclosure — local elected officials and candidates to be local elected officials.

(a) (1) This section applies to all local elected officials and candidates to be local elected officials.

(2) Except as provided in subsection (b) of this section, a local elected official or a candidate to be a local elected official shall file the financial disclosure statement required under this section:

- (i) On a form provided by the commission;
- (ii) Under oath or affirmation; and
- (iii) With the commission.

(3) Deadlines for filing statements.

(i) An incumbent local elected official shall file a financial disclosure statement annually no later than April 30 of each year for the preceding calendar year.

(ii) An individual who is appointed to fill a vacancy in an office for which a financial disclosure statement is required and who has not already filed a financial disclosure statement shall file a statement for the preceding calendar year within thirty (30) days after appointment.

(iii) A write-in candidate for elective office who is elected shall file a financial disclosure statement for the preceding calendar year within seven (7) days following certification of the election results.

~~(iii)~~ **(iv)** (A) An individual who, other than by reason of death, leaves an office for which a statement is required shall file a statement within sixty (60) days after leaving the office.

(B) The statement shall cover:

1. The calendar year immediately preceding the year in which the individual left office, unless a statement covering that year has already been filed by the individual; and

2. The portion of the current calendar year during which the individual held the office.

(b) Candidates to be local elected officials.

(1) This section (b) does not apply to a write-in candidate for elective office.

~~(1)~~**(2)** Except for an official who has filed a financial disclosure statement under another provision of this section for the reporting period, a candidate to be an elected local official shall file a financial disclosure statement ~~each year beginning with the year in which the nominating petition is filed through the year of the election.~~

~~(2) To afford the commission sufficient time to review a statement for adequacy, a candidate to be an elected local official shall file a statement required under this section, no later than the filing of the nominating petition, which must be filed before 5:00 pm on the third Tuesday before the election.~~

(3) A candidate to be an elected official may ~~official may~~ file the statement required under section 2-56(b)~~(2)~~ of this division with the town manager ~~or election board with the nominating petition or with the commission prior to filing the nominating petition.~~ Upon the receipt of a statement required under this section, the town manager ~~or election board~~ shall promptly forward the statement to the commission or the office designated by the commission.

(4) The town manager ~~or election board~~ may not accept any nominating petition unless a statement has been filed in proper form, as determined by the commission. If a candidate fails to correct a deficiency in the statement within 10 days after written notice of

deficiency is provided by the commission, or otherwise fails to file a proper statement by April 30, the candidate shall be deemed to have withdrawn the candidacy.

* * *

SECTION 2. AND BE IT FURTHER ORDAINED AND ORDERED, this ___ day of _____, by the Town Council of the Town of Chevy Chase, acting under and by virtue of the authority granted to it by the Maryland Code and the Town Charter, that:

(1) If any part or provision of this Ordinance is declared by a court of competent jurisdiction to be invalid, the part or provision held to be invalid shall not affect the validity of the ordinance as a whole or any remaining part thereof; and

(2) This Ordinance shall take effect on the ___ day of _____.

ATTEST:

TOWN OF CHEVY CHASE

Vicky Taplin, Secretary

Albert Lang, Mayor
Town of Chevy Chase

Bold and Underline indicates new material

~~Strike through~~ indicates material deleted

* * * indicates material unchanged

Town of Chevy Chase
Ordinance to Amend the Public Ethics Law and the Elections Law

Resolution No.:
Introduced: December 9, 2015
Adopted:
Effective Date:

WHEREAS, the Maryland Code, Local Government Article, Section 5-202, as amended, authorizes the legislative body of each municipal corporation in the State of Maryland to pass ordinances that such legislative body deems necessary to assure the good government of the municipality, to protect and preserve the municipality's rights, property and privileges, to preserve peace and good order, to secure persons and property from danger and destruction, and to protect the health, comfort and convenience of the citizens of the municipality; and

WHEREAS, Section 301 of the Town of Chevy Chase Charter authorizes the Town Council to pass ordinances as it may deem necessary for the good government of the Town; for the protection and preservation of the Town's property, rights and privileges; for the preservation of peace and good order; for securing persons and property from violence, danger and destruction; and for the protection and promotion of the health, safety, comfort, convenience, welfare and happiness of the resident(s) of the Town; and for such other police and health matters as it may deem necessary; and

WHEREAS, the State Public Ethics Law, State Government Article, Section 15-803 of the Maryland Code, as amended, requires each municipal corporation to enact provisions, equivalent to the provisions applicable to State officials, to govern the public ethics of local officials relating to conflicts of interest, financial disclosure, and lobbying; and

WHEREAS, by letter dated January 25, 2013, the Town was granted partial exemption from the State Public Ethics Law, and need not adopt the requirements related to lobbying; and

WHEREAS, the Town of Chevy Chase adopted Ordinance No. 13-03, on November 13, 2013, to amend the Town Ethics Law to incorporate the requirements of the State Public Ethics Law, relating to conflicts of interest and financial disclosure; and

WHEREAS, The Town Council provided a copy of Ordinance No. 13-03 to the State Ethics Commission for its review and, by letter dated September 17, 2013, the State Ethics Commission approved the Ordinance; and

WHEREAS, the Town Council finds that further amendment of the Town Public Ethics Ordinance is necessary to specify when a write-in candidate must file a financial disclosure statement; and

WHEREAS, the Town Council finds that, to conform to the requirements of State law with respect to write-in candidates, a certificate of candidacy should be required to be filed prior to the Town election for a write-in candidate to be eligible for election, and the write-in

candidate's financial disclosure statement should be filed therewith to allow voters the opportunity to review the financial disclosures prior to the election; and

WHEREAS, the Town Council finds that the ordinance as hereinafter set forth is necessary for the good government of the Town; for the protection and preservation of the Town's property, rights and privileges; for the preservation of peace and good order; for securing persons and property from violence, danger and destruction; and for the protection and promotion of the health, safety, comfort, convenience, welfare and happiness of the resident(s) of the Town; and

WHEREAS, the Town Council provided a copy of the following Ordinance to the State Ethics Commission for its review and, by letter dated _____, 2015, the State Ethics Commission approved the following Ordinance; and

WHEREAS, the Town Council introduced the following Ordinance on the ____ day of _____, 2015 and after proper notice to the public, the Town Council conducted a public hearing at which it considered the following Ordinance in public session assembled on the ____ day of _____ 2015; and

NOW, THEREFORE, the Town Council of the Town of Chevy Chase does hereby adopt the following ordinance:

AN ORDINANCE TO AMEND THE PUBLIC ETHICS LAW, CHAPTER 2, DIVISION 4 AND TO AMEND THE ELECTIONS ORDINANCE, CHAPTER 8, OF THE TOWN OF CHEVY CHASE CODE, TO SPECIFY WHEN A WRITE-IN CANDIDATE MUST FILE A FINANCIAL DISCLOSURE STATEMENT AND TO REQUIRE A CERTIFICATE OF CANDIDACY TO BE FILED FOR A WRITE-IN CANDIDATE TO BE ELIGIBLE FOR ELECTION

SECTION 1. BE IT ORDAINED AND ORDERED, this ____ day of _____, 2015, by the Town Council of Town of Chevy Chase, acting under and by virtue of the authority granted to it by the State Government Article of the Maryland Code, and Section 301 of the Town Charter, that Chapter 2, Division 4 of the Town Code is hereby revised as follows:

Chapter 2

* * *

DIVISION 4. PUBLIC ETHICS

* * *

Sec. 2-56. Financial disclosures—Local elected officials and candidates to be local elected officials.

* * *

(b) Candidates to be local elected officials.

(1) Except for an official who has filed a financial disclosure statement under another provision of this section for the reporting period, a candidate to be an elected local official shall file a financial disclosure statement ~~each year beginning with~~ **when** the year ~~in which the nominating petition is filed through the year of the election.~~

~~(2) To afford the commission sufficient time to review a statement for adequacy, a candidate to be an elected local official shall file a statement required under this section, no later than the filing of the nominating petition, which must be filed before 5:00 pm on the third Tuesday before the election.~~

(2) A write-in candidate to be an elected local official shall file a statement required under this section when the certificate of candidacy is filed, which must be filed before 5:00 pm on the seventh calendar day preceding the election.

(3) A candidate to be an elected official may ~~official may~~ file the statement required under section 2-56(b)**(1) or** (2) of this division with the town manager or election board ~~with the nominating petition or with the commission prior to filing the nominating petition.~~ Upon the receipt of a statement required under this section, the town manager or election board shall promptly forward the statement to the commission or the office designated by the commission.

(4) The town manager or election board may not accept any nominating petition **or certificate of candidacy** unless a statement has been filed in proper form, as determined by the commission.

(5) A candidate, including a write-in candidate, is not qualified for election unless a statement has been filed in proper form. ~~If a candidate fails to correct~~ **Any** deficiency in the statement ~~within 10 days~~ **must be promptly corrected** after written notice of deficiency is provided by the commission, ~~or otherwise fails to file a proper statement by~~ **If any deficiency is not corrected by** April 30, the candidate shall be deemed to have withdrawn the candidacy **and shall be ineligible for election.**

* * *

Chapter 8

ELECTIONS

* * *

Sec. 8-3. Nominations **and Write-In Candidates.**

- (a) ~~This section does not prohibit write-in candidates.~~ **To be qualified for election, a write-in candidate must file a certificate of candidacy before 5:00 pm on the seventh calendar day preceding the election, in a form provided by the Town. Any votes cast for a write-in candidate who has failed to comply with this section shall be reported but not counted.**

* * *

Sec. 8-4. Notice of elections.

* * *

- (b) The election board shall cause to be mailed to all residents of the town, not later than the second Tuesday immediately preceding the election, a notice of the election containing the name and a short biographical sketch of each candidate. The notice shall contain a statement that there will be appropriate blanks on the printed ballot for the purpose of adding write-in candidates at the time of election **and that write-in candidates must file a certificate of candidacy before 5:00 pm on the seventh calendar day preceding the election in order to be qualified for election.**

* * *

SECTION 2. AND BE IT FURTHER ORDAINED AND ORDERED, this ____ day of _____, 2015, by the Town Council of the Town of Chevy Chase, acting under and by virtue of the authority granted to it by the Maryland Code and the Town Charter, that:

(1) If any part or provision of this Ordinance is declared by a court of competent jurisdiction to be invalid, the part or provision held to be invalid shall not affect the validity of the ordinance as a whole or any remaining part thereof; and

(2) This Ordinance shall take effect on the ____ day of _____, 2015.

ATTEST:

TOWN OF CHEVY CHASE

Vicky Taplin, Secretary

Albert Lang, Mayor
Town of Chevy Chase

Bold and Underline indicates new material
~~Strike through~~ indicates material deleted
* * * indicates material unchanged

**Town of Chevy Chase
Ordinance to Amend Urban Forest Ordinance**

Resolution No.:
Introduced:
Adopted:
Effective Date:

WHEREAS, Section 5-202 of the Local Government Article of the Maryland Code grants to the legislative body of every incorporated municipality in Maryland, including the Town of Chevy Chase, general power to pass such ordinances not contrary to the Constitution of Maryland or public general law as deemed necessary in order to assure the good government of the municipality, to protect and preserve the municipality's rights, property, and privileges, to preserve peace and good order, to secure persons and property from danger and destruction, and to protect the health, comfort, and convenience of the citizens of the municipality; and

WHEREAS, the Natural Resources Article, Title 5, Subtitle 4, Part IV of the Maryland Code authorizes a municipal corporation to implement a local urban and community forestry program within its jurisdiction; and

WHEREAS, Section 301 of the Town of Chevy Chase Charter authorizes the Town Council to pass ordinances as it may deem necessary for the good government of the Town; for the protection and preservation of the Town's property, rights and privileges; for the preservation of peace and good order; for securing persons and property from violence, danger and destruction; and for the protection and promotion of the health, safety, comfort, convenience, welfare and happiness of the residents of the Town; and for such other police and health matters as it may deem necessary; and

WHEREAS, trees benefit the Town by filtering the air, capturing carbon dioxide, providing shade, buffering noise, harboring wildlife, controlling storm water runoff, and stabilizing soils, and the Town Council has determined that the existing canopy trees in the Town constitute an important natural resource that must be protected, preserved and, replaced: and

WHEREAS, the Town Council asked the Climate and Environment Committee to review the Urban Forest Ordinance, Chapter 29 of the Town Code, and to make any recommendations for amendment thereto deemed appropriate; and

WHEREAS, the Climate and Environment Committee held several public meetings and submitted its findings and recommendations to the Town Council in an open meeting conducted on the 9th day of December 2015; and

WHEREAS, the Town Council discussed the findings and recommendations of the Climate and Environment Committee in a public meeting held on the 6th day of January 2016 and introduced the following Ordinance in an open meeting conducted on the ____ day of _____; and

WHEREAS, after proper notice to the public, the Town Council conducted a public hearing at which it considered the following ordinance in public session assembled on the _____ day of _____; and

WHEREAS, upon consideration of the findings and recommendations of the Climate and Environment Committee, the Town Council's deliberations, and the record of the public hearing, the Town Council finds that portions of Chapter 29 should be clarified or amended; and

WHEREAS, the Town Council finds that the Ordinance as hereinafter set forth is necessary for the good government of the Town; for the protection and preservation of the Town's property, rights and privileges; for the preservation of peace and good order; for securing persons and property from violence, danger and destruction; and for the protection and promotion of the health, safety, comfort, convenience, welfare and happiness of the residents of the Town.

NOW THEREFORE, the Town Council of the Town of Chevy Chase does hereby adopt the following ordinance:

AN ORDINANCE TO AMEND CHAPTER 29 OF THE TOWN OF CHEVY CHASE MUNICIPAL CODE TO RESTRICT THE DEFINITION OF CANOPY TREE TO CERTAIN SPECIES; TO ALLOW CANOPY TREES TO BE REMOVED IF DEEMED HAZARDOUS BY THE TOWN MANAGER IN CONSULTATION WITH THE TOWN ARBORIST AND PROPERTY OWNER, SUBJECT TO POSSIBLE CONDITIONS FOR REFORESTATION OR PAYMENT OF AN IMPACT FEE; TO NO LONGER DECLARE A SECOND VIOLATION OF CHAPTER 29 TO BE A MISDEMEANOR; TO DESIGNATE THE TOWN COUNCIL AS THE REVIEWING BODY; AND TO REMOVE THE TREE ORDINANCE BOARD.

SECTION 1. BE IT ORDAINED AND ORDERED, this _____ day of _____, by the Town Council of the Town of Chevy Chase, acting under and by virtue of the authority granted to it by the Maryland Code, and the Town Charter, that Chapter 29 of the Town Code is hereby amended to read as follows:

* * *

Sec. 29-1 - Findings and purpose.

The town council finds that it is in the interest of the residents of the Town of Chevy Chase to preserve, protect, and maintain the town's tree canopy. Because trees require the span of a human lifetime to mature and can be subject to disturbance at many points in their lives, the town places a high value on the mature trees that have survived to form an intrinsic part of the fabric of our community and a defining feature of its character.

The town benefits from the mature tree canopy because it:

- Contributes significant aesthetic value
- Measurably increases property worth
- Fosters a cherished quality of life
- Recycles the air we breathe by absorbing carbon dioxide and producing oxygen
- Absorbs air pollutants
- Moderates climate extremes and reduces wind speed, thus conserving energy otherwise used for increased air conditioning and heating
- Provides food and shelter for innumerable plant and animal species
- Forms an interrelated part of the regional forest ecosystem, connecting with adjoining forest communities
- Muffles noise
- Stabilizes soils, reducing soil erosion and stormwater runoff

Each mature tree in the town's urban forest plays a critical role in controlling stormwater runoff and supporting the biological and hydrological integrity of the Lower Rockville and Little Falls Branch watersheds, part of the larger Chesapeake Bay watershed. Thus, the regulation of actions affecting the town's tree canopy provides benefits to all town residents and property owners and contributes to the greater good of the Suburban Maryland and Washington region.

Sec. 29-2. --~~Tree ordinance board.~~ Reserved.

~~The provisions of this chapter will be administered by a tree ordinance board made up of residents of the town appointed by the mayor. The board will consist of five (5) members. A quorum shall consist of a majority of the members of the board. A decision may be made by a majority of those present at the hearing as described in section 29-7. Members will be appointed to serve staggered terms of three (3) years.~~

Sec. 29-3. - Trees included.

(a) This chapter applies to all ~~canopy~~ **the following** trees on private and public property in the Town of Chevy Chase:

- (1) Canopy tree.** A canopy tree is defined as a tree with a trunk that measures at least twenty-four (24) inches in circumference at four and one-half (4½) feet above ground **and of one of the following species: Green Ash; White Ash; American Beech; European Beech; American Elm; Ginkgo; Hackberry; Bitternut Hickory; Mockernut Hickory; Pignut Hickory; Shagbark Hickory; American Linden; Black Maple; Red Maple; Sugar Maple; London Planetree; Black Oak; Blackjack Oak; Chestnut Oak; Overcup Oak; Pin Oak; Post Oak; Northern Red Oak; Southern Red Oak; Scarlet Oak; Shingle Oak; White Oak; Swamp White Oak; Willow Oak; Tulip Poplar; American Sycamore; Sweetgum; Blackgum (Tupelo); or Black Walnut.**

(2) Regulated tree. A regulated tree is defined as a tree that measures at least twenty-four (24) inches in circumference at four and one-half (4½) feet above ground, regardless of species.

(b) If a tree divides into branches at less than four and one-half (4½) feet, the trunk shall be measured immediately beneath the dividing point.

Sec. 29-4. - Permit required.

(a) No person shall remove or destroy, or cause the removal or destruction of; a **regulated** ~~canopy~~-tree, or undertake any action that will substantially impair the health or growth of a **regulated** ~~canopy~~-tree without first obtaining a permit from the town. Notwithstanding the foregoing, the town retains the right to remove a ~~canopy~~-tree from any public right-of-way, in accordance with the requirements of the Maryland Roadside Tree Law, as amended or replaced.

(b) In the case of an emergency that threatens imminent harm to life or property as determined by the town manager, the provisions of this chapter are waived and the town manager may issue an immediate tree removal permit.

Sec. 29-5. - Permit procedure.

(a) In order to remove or destroy or undertake any action that will substantially impair the health or growth of a **regulated** ~~canopy~~-tree, a property owner shall first apply in writing for a tree removal permit from the town office using an official town application form that will include:

- (1) The street address of the property upon which the proposed action is to be taken;
- (2) The name, address and telephone numbers of the property owner;
- (3) The species and approximate circumference four and one-half (4½) feet above the ground of all tree(s) to be removed; and
- (4) A description and diagram of the proposed action including the location on the property of all tree(s) to be removed.

(b) Except in the case of an emergency permit issued pursuant to subsection 29-4(b), the town shall post a notice in a conspicuous manner on the subject property describing the tree removal permit application prior to evaluating the request.

Sec. 29-6. – Permit standards and requirements.

(a) The town manager is authorized to issue a tree removal permit if in consultation with the town arborist, **and/or a property owner,** it is found that one (1) of the following conditions applies:

- (1) ~~The~~ **A** canopy tree is dying, dead, or in danger of falling;
- (2) ~~The~~ **A** canopy tree constitutes a hazard to the safety of persons or property; ~~or~~

(3) ~~The canopy tree is a nuisance tree on the town's list of undesirable tree species as adopted by the town council.~~ **The tree to be removed is not a canopy tree.**

(b) Except in the case of an emergency permit issued pursuant to subsection 29-4(b), the town shall post a notice of approval of a tree removal permit in a conspicuous manner on the subject property and on the ~~canopy~~ tree(s) to be removed. The ~~canopy~~ tree(s) shall not be removed until at least seven (7) calendar days after the posting of the notice(s).

(c) In the case of an emergency permit issued pursuant to subsection 29-4(b), the town shall post a notice of emergency approval as soon as practicable in a conspicuous manner on the subject property.

(d) If the town manager determines that none of the ~~above~~ conditions **in section 29-6(a)** apply, he/she **the town manager** shall issue a written denial of the application.

(e) The town manager may impose conditions on a tree removal permit that the town manager deems reasonably necessary to accomplish the intent and purposes of this chapter and/or to protect the public health, safety, or welfare. The conditions that the town manager may impose include, but are not limited to, requiring one (1) reforestation tree to be installed on the subject property for each canopy tree removed, or payment of an impact fee as established by the town council by resolution.

Sec. 29-7. - Appeals.

An applicant who is denied a permit by the town manager, **or aggrieved by a permit condition imposed by the town manager,** may appeal the decision by filing a written appeal to the ~~tree ordinance board~~ **town council** within thirty (30) days of the town manager's ~~denial of the application for~~ **action on** a permit **application**. The appeal must include the following information:

- (1) A copy of the ~~denied~~ tree **removal** permit application;
- (2) **If a permit application is denied, a** brief statement explaining why the proposed action is reasonable and necessary and consistent with the purposes of this chapter;
- (3) **If a permit application is approved with conditions not acceptable to an applicant, a brief statement explaining why the applicant contends any permit condition imposed by the town manager is inappropriate;** and
- (4) A statement whether the applicant intends to perform reforestation after tree removal is completed and if so, a diagram showing the number, size and species of the replacement tree or trees.

Sec. 29-8. - Appeals procedures.

(a) ~~Upon the filing of an appeal, t~~**The** town manager will transmit to the ~~tree ordinance board~~ **town council** the appeal record.

(b) Upon receipt of the appeal, the ~~tree ordinance board~~ **town manager** will schedule a public hearing.

(c) At least ~~seven (7)~~ **fifteen (15)** days prior to the public hearing the town manager shall:

- (1) Issue a notice of public hearing to the applicant and to owners of all adjacent and confronting properties or to those persons who are in residence, which shall include the nature of the ~~application~~ **appeal**, the date and time of the public hearing, and the location of the public hearing;
- (2) Post the notice of public hearing at the property in a conspicuous manner similar to the posting of a county building permit notice; and
- (3) Provide a copy of the appeal file to the owners of all adjacent and confronting properties or to those persons who are in residence.

(d) At the hearing, any party may appear in person or by agent or by attorney. The decision by the ~~tree ordinance board~~ **town council** shall be issued in writing as soon as practical following the hearing.

(e) In exercising its powers, the ~~tree ordinance board~~ **town council** may affirm the denial of a permit, **may affirm any condition imposed by the town manager**, may direct the town manager to issue a **new or revised** permit, or may direct the manager to issue a **new or revised** permit upon such conditions, terms or restrictions as the ~~board~~ **town council** may deem necessary to accomplish the intent and purposes of this chapter.

Sec. 29-9. - Factors to be considered in evaluating an appeal.

(a) With respect to an appeal concerning the denial of a tree permit application, ~~The tree ordinance board~~ **town council** shall consider the following factors in deciding whether to approve or deny a request for a tree removal permit for a tree that does not qualify for removal under section 29-6.

- (1) The reasons cited by the applicant for wanting to remove the canopy tree.
- (2) The applicant's intention to plant replacement trees, with consideration of the number, size and desirability of species, and with a minimum goal of replacing the canopy tree to be removed.
- (3) The applicant's intention to retain and protect existing trees.
- (4) The facts in support or opposition presented by town residents.
- (5) Information provided by the town arborist.
- (6) The extent to which no alternative to canopy tree removal exists that would allow the proposed development, construction, or land use otherwise permitted under the town building code.
- (7) The desirability of preserving a canopy tree by reason of its age, size or outstanding qualities, including uniqueness, rarity or species.
- (8) The overall effect on the tree canopy of the adjacent properties, the neighborhood and the town.

- (9) The aggregate or cumulative effect of the proposed canopy tree removal(s), including any and all canopy tree removals from the property within the prior two-year period.

(b) With respect to an appeal concerning a tree removal permit condition imposed by the town manager, the town council may consider any and all information, facts, and circumstances deemed by the town council to be pertinent to the appeal.

Sec. 29-10. - Judicial review of a decision of ~~tree ordinance board~~ the town council.

Within thirty (30) days of the date of the issuance of a decision of the ~~tree ordinance board~~ **town council** any aggrieved party may seek judicial review of the decision by filing a petition for judicial review in accordance with Title 7, Chapter 200, Judicial Review of Administrative Agency Decisions, of the Maryland Rules of Procedure, **as amended**.

Sec. 29-11. - Protection of trees at risk.

(a) Before undertaking any activity that poses a potential risk to any ~~canopy~~ **regulated** tree on the property in question, or poses a potential risk to any ~~canopy~~ **other tree, regardless of size or species,** on an adjoining property or on the town right-of-way, a property owner shall submit a tree protection plan for review and approval by the town manager in consultation with the town arborist. It is the responsibility of the property owner to ascertain whether a construction-related activity places any ~~canopy~~-tree in jeopardy.

(b) Activities that pose a potential risk to ~~canopy~~-trees include but are not limited to (i) the demolition, in whole or in part, of an existing home or structure; (ii) the construction of a new home or structure; (iii) the expansion of the footprint of an existing home or structure; (iv) the construction of a driveway, patio or other impervious surface; (v) the construction of walls, (vi) installation of underground utility lines, and (vii) ~~regarding~~ **regrading** or excavating within the dripline of a ~~canopy~~-tree.

(c) In those instances in which a town building permit is required, compliance with the tree protection plan will become a condition of the building permit.

Sec. 29-12. - Tree protection plans.

(a) A tree protection plan is defined as a plan that delineates tree root protection areas and other measures to be taken to ensure the safety and survivability of all ~~canopy~~ **regulated** trees on the subject property and all ~~canopy~~-trees at risk, **regardless of size or species,** on adjoining properties and on the town right-of-way.

(b) Tree protection plans shall comply with the standards set forth in section 29-13 of this chapter.

(c) Prior to submission to the town manager, the applicant must provide a copy of the complete plan with any attachments to owners of all adjacent and confronting properties or to those persons who are in residence. An applicant shall submit with the tree protection plan an

affidavit confirming compliance with this section. Before the tree protection plan is submitted to owners of adjacent and confronting properties, a preliminary tree protection plan shall be submitted to the town manager. The town manager may, in consultation with the town arborist, preliminarily review the accuracy of the plan. The town manager may require the applicant to amend or expand the plan before it is submitted to owners of adjacent and confronting properties.

(d) The town manager may require the applicant to amend or expand the tree protection plan as a condition of approval of the town building permit when ~~he/she~~ **the town manager deems** it necessary to protect ~~any~~ **any** canopy-tree.

(e) No construction or demolition shall begin until an approved tree protection plan has been implemented. The town manager will provide ongoing oversight of the plan to ensure compliance through completion of the project.

(f) In those instances in which a town building permit is required, the approved tree protection plan shall be incorporated by reference as a condition of the town building permit. Violation of the provisions of the tree protection plan shall be considered a violation of the conditions of the town building permit and subject to the same sanctions.

(g) The approved tree protection plan shall be posted at the property prior to the commencement of construction in a conspicuous manner similar to the posting of a county building permit notice and left in place until construction is finished.

Sec. 29-13. - Requirements for tree protection plans.

(a) The objectives of a tree protection plan are to minimize the impacts of construction activities on ~~canopy~~-trees, including but not limited to: mechanical injury to roots, trunks and branches; compaction of soil which degrades functioning roots and inhibits the development of new ones; and changes in grade which can cut off or suffocate roots. A tree protection plan shall, where applicable, include the following:

- (1) Existing and proposed property lines, structures, utility lines, driveways, sidewalks, and other paved surfaces.
- (2) The size (circumference at four and one-half (4½) feet above the ground), species, state of health, estimated location of dripline, and accurate location of all trees on the project property, as well as ~~canopy~~-**all** trees on neighboring properties where their driplines lie over the proposed construction zone.
- (3) A delineation of the tree protection zones within which all construction activities, grading or drainage changes, trenching, heavy equipment, or storage of materials will be excluded. All tree protection zones must be surrounded by chain link fences six (6) feet in height with signage affixed warning workers to stay away in English and Spanish.
- (4) Boundaries of tree protection zones will be located to provide the maximum protection for tree roots.

- (5) The delineation of areas to be excavated, regraded, and/or disturbed, as well as mitigation measures to be used to protect remaining trees if substantial grading changes are proposed.
- (6) The location of any proposed trenching for underground utility lines.
- (7) The location of any temporary gravel construction access drives and where construction materials and equipment will be stored.
- (8) All trees proposed for removal.
- (9) All trees to be protected in tree protection zones, including all trees in the town right-of-way.
- (10) The location, species and diameter of each replacement **or reforestation** tree proposed or required.
- (11) The methods by which tree branches and roots are to be protected before construction. Branch and root pruning must adhere to International Society of Arboriculture standards.
- (12) The maintenance program for trees to be protected during construction as well as for replacement **or reforestation** trees for two (2) years following construction.
- (13) Contact information for a designated individual who will ensure that all work adheres to the approved tree protection plan.
- (14) A copy of the approved tree protection plan posted on the property on a board covered with plastic prior to the commencement of construction and left in place until construction is finished.

Sec. 29-14. - Penalties.

(a) Violation of any provision of this chapter, including but not limited to removing, destroying, or impairing the health of a ~~canopy~~ **regulated** tree without obtaining a permit (section 29-4), removing a ~~canopy~~ **regulated** tree prior to the expiration of the seven-day notification period (section 29-6), undertaking any activity that poses a potential risk to any ~~canopy~~-tree without filing a tree protection plan (section 29-11), failing to provide a copy of the complete tree protection plan to owners of all adjacent and confronting properties or to those persons who are in residence (section 29-12), or failing to comply with any part or provision of an approved tree protection plan, shall be a municipal infraction unless otherwise specifically provided. Any person or persons guilty of a municipal infraction shall be subject to a fine, per canopy tree, of one thousand dollars (\$1,000.00) or the maximum amount permitted by state law, whichever is greater.

(b) Whenever the town manager finds that a violation of this chapter may jeopardize the health or safety of a ~~canopy~~-tree, he/she may issue a stop work order to halt any activity that may damage the tree and may order remedial action as appropriate.

(c) A stop work order issued pursuant to this chapter, posted on the property in a conspicuous location, shall be sufficient service upon all persons physically on the property. A posted notice shall not be removed except under the authority of the town manager.

~~(d) A second violation of this chapter within a two-year period, or a violation of a stop work order, shall be a misdemeanor and upon conviction shall be punishable by a fine, per~~

~~canopy tree, of one thousand dollars (\$1,000.00) or the maximum amount permitted by state law, whichever is greater, and imprisonment for six (6) months or the maximum duration permitted by state law, whichever is greater.~~

(ed) Any person who violates any provision of this chapter, or directs or allows another to commit an act that would violate any provision of this chapter, the person's employer if the person acted in the course of his or her employment, and any property owner who allows a violation of any provision of this chapter on his or her property shall be guilty of a violation and shall be jointly and severally subject to the penalties provided in subsections (a) and (d) above. If a violation occurs, there shall be a rebuttable presumption that all owners of the property allowed the violation. Each violation of a provision of this chapter shall be a separate infraction. Each day that a violation exists shall constitute a separate violation.

(fe) The town may institute injunctive or any other appropriate action or proceedings at law or equity for the enforcement of this chapter in any court of competent jurisdiction.

Sec. 29-15. Severability.

~~Should any part or provision of this chapter be declared by a court of competent jurisdiction to be invalid, the same shall not affect the validity of the chapter as a whole or any part thereof other than the part held to be invalid.~~

* * *

SECTION 2. AND BE IT FURTHER ORDAINED AND ORDERED, this ____ day of _____, by the Town Council of the Town of Chevy Chase, acting under and by virtue of the authority granted to it by Maryland law and the Town Charter, that:

(1) If any part or provision of this Ordinance is declared by a court of competent jurisdiction to be invalid, the part or provision held to be invalid shall not affect the validity of the ordinance as a whole or any remaining part thereof; and

(2) This Ordinance shall take effect on the ____ day of _____.

ATTEST:

TOWN OF CHEVY CHASE

Vicky Taplin, Secretary

Albert Lang, Mayor
Town of Chevy Chase

Bold and Underline indicates new material
[brackets] indicates material deleted

* * * indicates material unchanged

**Town of Chevy Chase
Administrative Variance and Retaining Wall Ordinance**

Resolution No.:
Introduced:
Adopted:
Effective Date:

AN ORDINANCE TO AMEND CHAPTER 4 OF THE TOWN OF CHEVY CHASE MUNICIPAL CODE TO EXPAND THE LIST OF CONSTRUCTION PROJECTS THAT ARE ELIGIBLE FOR ADMINISTRATIVE VARIANCES AND TO ALLOW CERTAIN RETAINING WALLS TO BE CONSTRUCTED WITHOUT A VARIANCE.

WHEREAS, Maryland Code, Local Government Article, Section 5-202, as amended, authorizes the legislative body of each municipal corporation in the State of Maryland to pass ordinances that such legislative body deems necessary to assure the good government of the municipality, to protect and preserve the municipality's rights, property and privileges, to preserve peace and good order, to secure persons and property from danger and destruction, and to protect the health, comfort, and convenience of the citizens of the municipality;

WHEREAS, Maryland Code, Local Government Article, Section 5-211, as amended, authorizes the legislative body of each municipal corporation in the State of Maryland to make reasonable regulations concerning buildings to be erected within the limits of the municipality, including a building code and the requirement for building permits;

WHEREAS, Maryland Code, Land Use Article, Section 20-509 grants to the legislative body of incorporated municipalities in the Maryland-Washington Regional District general power to adopt building regulations for the protection of the public health, safety, and welfare; the preservation, improvement, and protection of lands, water, and improvements in the municipal corporation; and to regulate the construction, repair, or remodeling of buildings on land zoned for single-family residential uses at it relates to fences, walls, hedges, and similar barriers; signs; residential parking; residential storage; the location of structures, including setback requirements; the dimensions of structures, including height, bulk, massing, and design; and lot coverage, including impervious surfaces;

WHEREAS, Section 301 of the Town of Chevy Chase Charter authorizes the Town Council to pass ordinances as it may deem necessary for the good government of the Town; for the protection and preservation of the Town's property, rights and privileges; for the preservation of peace and good order; for securing persons and property from violence, danger and destruction; and for the protection and promotion of the health, safety, comfort, convenience, welfare, and happiness of the resident(s) of the Town; and for such other police and health matters as it may deem necessary;

WHEREAS, after proper notice to the public, the Town Council introduced the following Ordinance in an open meeting conducted on the __ day of _____, 2015;

WHEREAS, to comply with Maryland Code, Land Use Article, Section 20-509, on the __ day of _____, 2015, a copy of following Ordinance was submitted to the Montgomery County Council for its comments;

WHEREAS, the Montgomery County Council acknowledged receipt of the Ordinance by letter dated _____, 2016, and indicated that the County Council had no comments;

WHEREAS, after proper notice to the public, and after at least thirty days from the date a copy of the following Ordinance was transmitted to the Montgomery County Council, the Town Council considered the following Ordinance in public session assembled on the __ day of _____, 2016;

WHEREAS, after receiving a report and recommendation from Town staff, and upon consideration of the testimony and evidence presented at the public hearing, the Town Council finds that expanding the list of construction projects that are eligible for administrative variances, and allowing certain retaining walls to be constructed without a variance, would lessen the costs incurred and time spent by building permit applicants while preserving the intents and purposes of the building regulations;

WHEREAS, the Town Council finds that the ordinance as hereinafter set forth is necessary for the good government of the Town; for the protection and preservation of the Town's property, rights and privileges; for the preservation of peace and good order; for securing persons and property from violence, danger and destruction; and for the protection and promotion of the health, safety, comfort, convenience, welfare, and happiness of the residents of the Town.

THEREFORE, BE IT ORDAINED AND ORDERED, this __ day of _____, 2016, by virtue of the authority given to it by the Maryland Code and the Town of Chevy Chase Charter, the Town Council of the Town of Chevy Chase does hereby adopt the following ordinance.

SECTION 1. BE IT ORDAINED AND ORDERED, this __ day of _____, 2016, by the Town Council of the Town of Chevy Chase, acting under and by virtue of the aforementioned authority, that Chapter 4 of the Town Code is hereby amended to read as follows:

* * *

Sec. 4-7. - Developmental nonconformities.

A developmental nonconformity may be maintained, altered and repaired, but not replaced, provided that it may not be enlarged beyond the dimensions that existed on May 17, 2008, except in accordance with this chapter. Notwithstanding the foregoing, nonconforming porches, decks,

stoops, steps, stairways, chimneys, bay and bow windows, and similar projections may be maintained, altered, repaired, or replaced provided that they may not be enlarged beyond the dimensions that existed on May 17, 2008, except in accordance with this chapter.

* * *

Sec. 4-51. - Structures, walls, fences, guardrails, handrails, berms, trees, hedges, shrubbery and other plant growth, on public property that are devoted to private use.

(a) Excepted as provided below, ~~N~~no structure, wall, fence, guardrail, berm, tree, hedge, shrubbery or any plant growth, except grass, ground cover, flowers, and similar plantings, shall be placed on public property devoted to private use. ~~Subject to the provisions of section 4-49, a handrail may be placed on public property devoted to private use upon approval by the town manager.~~

(b) Notwithstanding the above, and ~~S~~subject to the provisions of section 4-49, ~~structures, walls, fences, berms, trees, hedges, shrubbery and other plant growth that are located on public property devoted to private use on July 13, 2007, may be maintained, altered, repaired, but not enlarged or replaced,~~ the following private improvements may be allowed, provided that they: ~~(1) D~~o not extend into sidewalks or roadways so as to interfere in any manner with street trees, other public or private improvements, public utilities, or pedestrian or vehicular traffic on any sidewalk or road; ~~and (2) A~~re maintained in such a manner and at such height that a clear and unobstructed view is available to approaching traffic, both pedestrian and vehicular-, and otherwise do not interfere with the public health, safety, and welfare:

- (1) Structures, walls, fences, berms, trees, hedges, shrubbery and other plant growth that are located on public property devoted to private use on July 13, 2007, may be maintained, altered, repaired, but not enlarged or replaced;
- (2) A retaining wall or guardrail located on public property devoted to private use, as of _____, 2016, may be maintained, altered, repaired, and replaced, provided the location is not changed and no dimension is enlarged; and
- (3) A handrail on public property devoted to private use may be installed, maintained, altered, repaired, or replaced.

(c) The town manager shall determine whether there is compliance with the provisions of this section.

~~(d) Notwithstanding the above, and subject to the provisions of section 4-49, a retaining wall or guardrail located on public property devoted to private use may be maintained, altered, repaired, and replaced, provided the location and materials are not changed and no dimension is enlarged.~~

Sec. 4-52. - Structures, walls, fences, guardrails, handrails, berms, trees, hedges, shrubbery and other plant growth on private property.

(a) The property owner and the property occupant shall maintain walls, fences, guardrails, handrails, berms, structures, trees, hedges, shrubbery, and other plant growth located on private property so that they:

- (1) Do not, at any time, exceed the maximum height as specified in this chapter;
- (2) Do not project into any public right-of-way so as to interfere in any manner with pedestrian or vehicular traffic;
- (3) Do not obstruct the view of sightlines necessary for safety;
- (4) Do not present a risk of harm to pedestrians and/or vehicles; and
- (5) Do not otherwise present a risk of harm to the public health, safety and welfare.

(b) Front yard walls. No wall that is one (1) foot in height or higher may be constructed in a front yard. ~~A, provided, however, a retaining~~ wall that is less than ~~one (1) foot~~ **thirty (30) inches** in height may be constructed in a front yard provided that it is set back at least two (2) feet from the nearest public ~~improvement~~ **sidewalk** within the public right-of-way **or, if there is no sidewalk, at least six (6) feet from the curb**. In the event a wall is located within thirty (30) inches of another wall, as may be the case in terracing, the walls shall be considered one (1) wall and the height of the wall shall be measured cumulatively. Height is measured in accordance with subsection (f) below.

(c) Front yard fences and berms. No fence or berm may be constructed in a front yard.

* * *

Sec. 4-53. - Nonconforming fences, walls, guardrails, handrails, berms, trees, hedges, shrubbery and other plant growth on private property.

(a) Fences, walls, guardrails, handrails, trees, berms, hedges, shrubbery, and other plant growth on private property existing as of November 8, 1986, and not conforming to this article shall be regarded as nonconforming and may be maintained and repaired, but not relocated, altered, or replaced.

(b) Nonconforming fences, walls other than retaining walls, guardrails, handrails, berms, trees, hedges, shrubbery and other plant growth on private property which are relocated, altered, or replaced shall comply with all provisions of this article.

(c) Nonconforming retaining walls on private property which are relocated, altered, or replaced shall comply with all provisions of this article, provided, however, a nonconforming retaining wall located in a front yard may be altered or replaced, if the location ~~and materials~~ is not changed and no dimension is enlarged.

* * *

Sec. 4-60. - Variances from requirements of building restrictions.

* * *

(c) *Administrative variances.*

(1) ~~Front yard fences and walls.~~ The town manager and mayor may grant variances as follows **for the following:**

a. New or relocated front yard retaining walls thirty (30) inches or greater in height, provided they are set back at least two (2) feet from the nearest public sidewalk in the public right-of-way or, if there is no sidewalk, at least six (6) feet from the curb;

b. New front yard fences measuring four (4) feet or less in height, having a fenestration of at least thirty (30) percent, not constructed of chain link, and on a corner lot abutting any street or on an interior lot abutting East-West Highway, Connecticut Avenue, or Bradley Lane;

~~b. c. Front yard fences and walls which~~ **in a front yard or in a public right-of-way** that replace an existing fence or wall provided the replacement fence or wall does not materially alter the location or increase the height or length of the fence or wall;

~~(2) Fences and walls in the public right of way.~~ The town manager and mayor may grant variances for replacement fences and walls in public right of way,

d. New or relocated retaining walls less than thirty (30) inches in height in a public right-of-way, provided they are set back at least two (2) feet from the nearest public sidewalk in the public right-of-way or, if there is no sidewalk, at least six (6) feet from the curb;

~~(3) e. Front yard guardrails.~~ The town manager and mayor may grant variances for ~~n~~**New**, relocated, or replacement guardrails, provided the guardrail is set back at least two (2) inches from the retaining wall and located along only portions of the retaining wall measuring thirty (30) inches or more in height;

f. New or relocated steps, stoops, outside stairways, and their roofing; decks, terraces, porches, and their roofing; chimneys, air conditioners, and heat pumps; and/or oriel entrances, vestibules, and balconies, in a front and/or rear yard;

g. New or relocated bay windows in a front and/or rear yard, provided they are no more than one (1) story in height and ten (10) feet or less in width;-

h. Additional width of six (6) feet or less for a driveway, other than a shared driveway, in a front yard and/or in a public-right-of-way;-

i. Extension of an existing wall plane;- and/or

j. Replacement of a structure or portion thereof, provided the location is not changed and no dimension is enlarged.

(43) *Posting requirement.* Fifteen (15) days prior to the town manager and mayor acting upon the administrative variance application, the town shall post the property, **post notice on the town website**, and provide written notification to all adjoining and confronting property owners and to all council members.

(54) If prior to the expiration of the fifteen-day notice period, written objection to the variance application is filed with the town manager, the variance application shall be scheduled for public hearing and heard by the town council in accordance with the provisions of subsection (b) above.

* * *

SECTION 2. AND BE IT FURTHER ORDAINED AND ORDERED, this ___ day of _____, 2016, by the Town Council of the Town of Chevy Chase, acting under and by virtue of the aforementioned authority, that:

(1) If any part or provision of this ordinance is declared by a court of competent jurisdiction to be invalid, the part or provision held to be invalid shall not affect the validity of the ordinance as a whole or any remaining part thereof; and

(2) This ordinance shall take effect on the ___ day of _____, 2016.

ATTEST:

TOWN OF CHEVY CHASE

Vicky Taplin, Secretary

Al Lang, Mayor
Town of Chevy Chase

Bold and Underline indicates new material
~~Strike through~~ indicates material deleted
* * * indicates material unchanged

Request for Proposal
Legal Advice In Connection with Efforts to Mitigate the Effects
Of the Proposed Purple Line
Town of Chevy Chase, Maryland
October 15, 2015

GENERAL

By this request for proposal, the Town is seeking to obtain legal advice from an Attorney with respect to the Town's efforts to mitigate the effects of the Purple Line project, a light rail system proposed to be constructed along the Town's northern border. The Town's focus is fourfold: noise and vibration abatement, safety, surface water control, and access to cross the project at or near Lynn Drive. In addition, the Town is concerned about minimizing the disruption during the period of construction. The Town is most concerned about assuring that any agreement it is able to negotiate with the United States Department of Transportation, the State of Maryland, Montgomery County or the Concessionaire chosen to build the project will be binding and enforceable.

SCOPE

The Attorney will advise the Town, on an, *as needed basis*, as to steps it should take to ensure that the Town's interests are protected in any agreements that it might enter into and to advise the Town in its negotiations to achieve its goals. The Town contemplates entering into an agreement that would establish an attorney-client relationship such that its communications with the attorney would be confidential.

The Town has allocated a maximum of \$50,000 for this project, which could be increased if the need arises. The Town seeks to retain an attorney by November 15, 2015 and the retention will continue until such time that the Town chooses to terminate the retention.

QUALIFICATIONS

The attorney should have experience in representing plaintiffs in transportation and/or environmental lawsuits with an emphasis on knowledge and experience in drafting binding agreements and ensuring that those agreements would be implemented.

PROPOSALS

Proposals should include:

- Transmittal letter;
- Qualifications of your firm, identifying the attorneys that would be performing work for the Town;
- Hourly rate for attorneys assigned to work for the Town and an estimate of any additional costs;
- References with complete contact information; and,
- Disclosure of current or expected involvement with any entity or agency studying the Purple Line light rail project.

If you wish to provide a proposal, the required information should be submitted to the Town of Chevy Chase, 4301 Willow Lane, Chevy Chase, MD 20815 by 5:00 p.m. on or before November 1, 2015.

The Town will award the contract on or about November 15, 2015.

Request for Proposal Engineering Services In Connection with Efforts to Mitigate the Effects Of the Proposed Purple Line Town of Chevy Chase, Maryland

GENERAL

By this request for proposal, the Town is seeking to obtain proposals from qualified engineering firms to provide professional engineering and design services, including reviews of design and engineering drawings produced by the State, County, Concessionaire and others, on an “as needed” basis with respect to the Town’s efforts to mitigate the effects of the Purple Line project, a light rail system proposed to be constructed along the Town’s northern border.

The Town’s focus is fourfold: noise and vibration abatement, safety, surface water control, and access to cross the project at or near Lynn Drive. In addition, the Town is concerned about minimizing the disruption during the period of construction and the temporary construction infrastructure and engineered safety measures.

The Town is most concerned about assuring that any agreement that the Town is contemplating and/or able to negotiate with the United States Department of Transportation, the State of Maryland, Montgomery County or the Concessionaire chosen to build the project will include appropriate engineering to mitigate and address the focus areas above.

SCOPE

The professional engineering firm will advise the Town, on an as needed basis, as to engineering and design plans of the Purple Line project that may result in adverse impacts to the Town, especially in the areas of noise and vibration, safety, and stormwater management. Also, the town seeks engineering and design advice on pedestrian/bike access for the Town residents from near the current Lynn Drive access to the Georgetown Branch trail and/or other points allowing the Town’s residents to safely cross under the Purple Line.

The Town has allocated a maximum of \$50,000 for this project, which could be increased if the need arises. The Town seeks to retain professional engineering services by _____, 2016 and the retention will continue until such time that the Town chooses to terminate the retention.

QUALIFICATIONS

The performance of all services by the Engineer in connection with this Agreement will be by persons appropriately licensed or registered under the State of Maryland and local and Federal laws and regulations governing their respective consulting disciplines.

In performing all services under this Agreement, the Engineer will use that degree of care and skill ordinarily exercised for similar projects by professional Engineers who possess expertise in the types of services involved under this Agreement.

The Town will consider selecting a firm for the provision of these Services based on the firm’s competence and ability to perform the work on a per project basis.

PROPOSALS

Proposals should include:

- Transmittal letter;
- Qualifications of your firm, identifying the engineers that would be performing work for the Town;
- Hourly rate for persons assigned to work for the Town and an estimate of any additional costs;
- References with complete contact information; and,
- Disclosure of current or expected involvement with any entity or agency studying the Purple Line light rail project.

If you wish to provide a proposal, the required information should be submitted to the Town of Chevy Chase, 4301 Willow Lane, Chevy Chase, MD 20815 by 5:00 p.m. on or before

_____.

The Town will award the contract on or about _____.

**Comments on Bethesda Sector Plan
Town of Chevy Chase
Al Lang, Mayor
January 7, 2016**

I appreciate this opportunity to provide comments on the proposed Bethesda Sector Plan on behalf of the Town Council and residents of the Town of Chevy Chase. I want to highlight four of the Town's primary interests, along with some specific observations.

First, we believe it is vitally important to **implement the proposed Bethesda Commons plan** on parking lots 24 and 10, between 46th St. and Wisconsin Avenue, as an extension of Elm Street Park and the proposed Eastern Greenway. We reject the idea that the parking lots will never be turned into a park, and welcome discussions on how we might work with the Planning Board and the DOT to understand and achieve our respective goals.

- From a community perspective, the Commons would offer an **appropriate transitional land use** (i.e. "buffer zone") between a single-family neighborhood and high density development, as is called for in the Sector Plan. It would create a large "**civic green**" behind the Farm Women's Market with a modern, underground parking facility below.
- This location presents a unique opportunity to create a **large, open recreation area** proximate to an urban business district -- a disappearing and highly desirable resource in the down-county area - for downtown Bethesda area residents and workers to enjoy.

Second, we strongly encourage the Board **to limit the height of buildings** immediately adjacent to and across the street from all residential neighborhoods to ensure commercial development compatible with nearby single-family residences. With regards to protecting the property interests of residents of the Town of Chevy Chase specifically, we require that:

- The **properties between Wisconsin Avenue and West Avenue should remain dual zoned or should be designated CRN** ("Commercial, Residential, Neighborhood"), with building heights no greater than 75 feet along Wisconsin Avenue and 35 feet along West Avenue. Additionally, if split zoning is eliminated, the **FAR for these properties should be capped at 1.75**, rather than 2.25 under the current plan. **Density transfers are misused** and should not be permitted at this location as they defeat the purpose of controlling the impact of development adjacent to residential neighborhoods.
- When rezoning properties along Wisconsin Avenue, the Planning Board should abide by the Sector Plan principle of "**stepped down development**" from the Metro station. In addition, any rezoning should ensure **mixed use development** of retail and residential units.
- In the event the Bethesda Commons plan is not fully implemented, **parking lots 10 and 24** should be zoned to allow for buildings no higher than 35 feet and with a FAR of 0.5.

Third, it is imperative that the Planning Board **conduct impact studies of density increases** over staff recommendations before sending the plan to the County Council.

- As acknowledged by the Planning Board staff, the Sector Plan contemplates significant density increases above professional staff recommendations on a parcel-by-parcel basis. The Planning Board is obliged to reconcile those increases with the **impact of the additional density** on traffic congestion, cut-through traffic and parking in residential neighborhoods, overcrowding in area schools, demand on public infrastructure, storm water run-off and other environmental concerns, and quality of life of area residents both during and after construction.

Finally, we believe that the Board should **solicit additional input from the public** before making decisions regarding significant future development adjacent to our neighborhood.

- Many Town **residents remain unaware of the potential impact** of various aspects of the Sector Plan on their neighborhood and quality of life. While the Planning Board did hold hearings over the summer, **significant changes have occurred** quietly and over a short period of time.
- We ask the Planning Board to **schedule another round of well-publicized hearings** on all aspects of the Bethesda Sector Plan before any recommendations are made to the County Council.